

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

KEVIN SCHEUNEMANN,

Plaintiff,

Case No.: 2:11-cv-00855

vs.

MRS ASSOCIATES,

Defendant.

**ANSWER AND AFFIRMATIVE DEFENSES TO THE COMPLAINT
ON BEHALF OF MRS ASSOCIATES, INC.**

NOW COMES Defendant MRS Associates, Inc. (“MRS” or “Defendant”), by and through its undersigned attorneys, as and for its Answer and Affirmative Defenses to Plaintiff’s Complaint, hereby states and alleges as follows:

I. INTRODUCTION

1. Answering paragraph 1 of the Complaint, Defendant admits that Plaintiff purports to bring a Complaint under the Federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 1692, *et seq.*, the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.*, the Wisconsin Consumer Act (“WCA”), Wis. Stat. Chap. 421-427, and the Wisconsin Deceptive Trade Practices Act (“DTPA”), but denies that he has a valid basis for doing so. Answering further, denies the remaining averments contained in paragraph 1.

2. **THERE IS NO PARAGRAPH 2 IN THE COMPLAINT.**

II. PARTIES

3. Answering paragraph 3 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint.

4. Answering paragraph 4 of the Complaint, Defendant denies the allegations set forth in paragraph 4 of the Complaint, except admits that its principal office is in Cherry Hill, New Jersey, and that a portion of its business is the collection of third-party unpaid, outstanding account balances, some of which emanate from the state of Wisconsin.

5. Answering paragraph 5 of the Complaint, the allegations that Plaintiff is a “consumer” and “debtor,” as defined by the WCA, are legal conclusions for which no response from Defendant is required. To the extent that a response is required, Defendant denies the averments contained in paragraph 5.

6. Answering paragraph 6 of the Complaint, the allegations that Defendant is a “debt collector” and engages in “debt collection, as defined by the WCA , are legal conclusions for which no response from Defendant is required. To the extent that a response is required, Defendant denies the averments contained in paragraph 6.

III. FACTUAL ALLEGATIONS

7. Answering paragraph 7 of the Complaint, Defendant denies the allegations set forth therein.

8. Answering paragraph 8 of the Complaint, Defendant denies the allegations set forth therein, but admits that it did contact Plaintiff at several telephone numbers provided by the creditor, American Express.

9. Answering paragraph 9 of the Complaint, Defendant admits only that it contacted Plaintiff by mail regarding the subject unpaid, outstanding account balance. Answering further,

denies the remaining averments contained in paragraph 9, and alleges that no document was attached as Exhibit A to the Complaint.

10. Answering paragraph 10 of the Complaint, admits only that Plaintiff called Defendant regarding the subject unpaid, outstanding account balance. Answering further, denies the remaining averments contained in paragraph 10, and alleges that Plaintiff told Defendant that it could "call all you want, if you want to keep talking about it."

11. Answering paragraph 11 of the Complaint, Defendant denies the averments set forth therein.

IV. STATEMENT OF CLAIMS AGAINST MRS SYSTEMS, INC. (sic)

12. Answering paragraph 12 of the Complaint, Defendant repeats and realleges its response to the preceding paragraphs of the Complaint as if set forth at length herein. Further, it denies the allegations stated in paragraph 12 of the Complaint.

PRAYER FOR RELIEF

13. Answering paragraph 13 of the Complaint, Defendant denies that Plaintiff is entitled to any of the relief as is claimed therein.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state any claim upon which relief may be granted.
2. The Complaint is barred, in whole or in part, as a result of Plaintiff's unclean hands and/or pursuant to the doctrines of waiver and/or estoppel.
3. Any violation of the FDCPA and/or the WCA, if any, was unintentional and resulted from a bonafide error, notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

4. Plaintiff's claims are, or may be, barred or diminished by Defendant's right to setoff and/or recoupment arising from defaults, deficiencies or otherwise.

5. Defendant is not liable for any actions of its agents or employees committed outside of the line and scope of their employment.

6. Plaintiff failed to mitigate his alleged damages, if any.

7. Plaintiff's claims against Defendant are barred by the doctrines of acquiescence and/or consent.

8. Plaintiff lacks standing to assert the claims in this lawsuit as he has not alleged or suffered and injury-in-fact as is required by Article III of the U.S. Constitution.

9. Plaintiff's claims under the WCA, DTPA and FDCPA are duplicative of one another and; therefore, Plaintiff, at most, is entitled to only a single recovery, if any.

10. The damages alleged by Plaintiff, if any, may have been the result of superseding and/or intervening cause(s).

11. Defendant did not proximately cause Plaintiff's alleged damages, if any.

WHEREFORE, defendant MRS Associates, Inc. demands judgment in its favor and against Plaintiff Kevin Scheunemann, dismissing the Complaint with prejudice and awarding Defendant costs, attorneys' fees and such other and further relief as the Court deems just and proper.

Dated this 16th day of September, 2011.

/s/ **David J. Hanus**

David J. Hanus

State Bar No. 1027901

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2011, I electronically filed the above Answer and Affirmative Defenses on Behalf of MRS Associates, Inc. with the Clerk of the Court using the CM/ECF system. On this same date notification of the same has been sent to the following U.S. First Class Mail with proper paid postage attached thereto:

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/s/ David J. Hanus

/s/ Carlos A. Ortiz